

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8
999 18TH STREET - SUITE 300
DENVER, CO 80202-2466
<http://www.epa.gov/region08>

2004 SEP -9 PM 12: 27

FILED
EPA REGION VIII
HEARING CLERK

DOCKET NO.: CWA-08-2003-0078

IN THE MATTER OF:


**WEINGARTEN/MILLER/AURORA
JOINT VENTURE, et. al.,**

Respondent

FINAL ORDER

Pursuant to 40 C.F.R. § 22.18, of EPA's Consolidated Rules of Practice, the Consent Agreement resolving this matter is hereby approved and incorporated by reference into this Final Order. The Respondents are hereby ORDERED to comply with all of the terms of the Consent Agreement, effective immediately upon receipt by Respondents of this Consent Agreement and Final Order.

DATE September 9, 2004


Alfred C. Smith
Regional Judicial Officer



UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION VIII

2004 SEP -9 PM 12: 27

FILED
EPA REGION VIII
CLERK

IN THE MATTER OF:) Docket No. CWA-08-2003-0078
)
)
) CONSENT AGREEMENT
Weingarten/Miller/Aurora Joint Venture,)
and Adolfson & Peterson Construction)
)
Respondents.)

Complainant, United States Environmental Protection Agency, Region 8 (EPA), and Respondents, Weingarten/Miller/Aurora Joint Venture and Adolfson & Peterson Construction, Inc., by their undersigned representatives, hereby consent and agree as follows:

1. On July 11, 2003, Complainant issued a Complaint alleging certain violations of the Clean Water Act ("Act"), § 301 (a), 33 U.S.C. § 1311(a). Complainant amended the Complaint on January 13, 2004. The Complaint proposed a civil penalty for the alleged violations of the storm water requirements specified in the Colorado Discharge Permit System ("CDPS") permit no. COR-030000.

2. Respondents admit the jurisdictional allegations of the Complaint but do not admit the specific factual allegations or other legal conclusions of the Complaint.

3. Respondents waive their right to a hearing before any tribunal, to contest any issue of law or fact set forth in the Complaint, or this Consent Agreement.

4. This Consent Agreement, upon incorporation into a final consent order, applies to and is binding upon EPA and upon Respondents and Respondents' heirs, successors and assigns. Any change in ownership or corporate status of Respondents, including, but not limited to, any transfer of assets or real or personal property, shall not alter Respondents' responsibilities under this agreement. This Consent Agreement contains all terms of the settlement agreed to by the parties.

5. Respondents consent and agree that not more than thirty (30) calendar days from the date of a signed final order in this matter, Respondents shall pay a civil penalty in the amount of \$ 125,000 (One Hundred Twenty Five Thousand Dollars) in the manner described below in this paragraph:

a. Payment is due within 30 calendar days from the date written on the Final

Consent Order, issued by the Regional Judicial Officer, that adopts this Consent Agreement. The date the payment is made is considered to be the date of receipt of the payment at the Mellon Bank described below. Payments must be received by 11:00 a.m. EST to be considered as received that day.

- b.. The payment shall be made by remitting a cashier's or certified check, including the name and docket number of this case, for the this amount, payable to "Treasurer, United States of America," to:

Regular Mail:

Mellon Bank
Lockbox 360859
Pittsburgh, PA 15251-6859

Federal Express, Airborne, or other commercial carrier.:

U.S. EPA, 360859
Mellon Client Service Center Rm 670
500 Ross Street
Pittsburgh, PA 15262-0001

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

ABA = 021030004
TREAS NYC/CTR/
BNF=/AC-68011008

Copies of the check or routing confirmation from the wiring insitution shall be sent to:

Lee Hanley, Environmental Engineer
Technical Enforcement Program (8ENF-W)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

Tina Artemis
Regional Hearing Clerk (8RC)
U.S. EPA Region VIII
999 18th Street, Suite 300
Denver, CO 80202-2466

- c. In the event payment is not received by the specified due date, interest accrues from the date of the final consent order, not the due date, at a rate

established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, and will continue to accrue until payment in full is received. (i.e., on the 1st late day, 61 days of interest accrues).

- d. In addition, a handling charge of fifteen dollars (\$15) shall be assessed on the 61st day from the date of the final consent order, and each subsequent thirty day period that the debt, or any portion thereof, remains unpaid. In addition, a six percent (6%) per year penalty shall be assessed on any unpaid principal amount if payment is not received within 90 days of the due date (i.e., the 121st day from the date the final consent order is signed). Payments are first applied to accrued interest, penalty and/or handling charge; the balance is then applied to the outstanding principal amount.
- e. Respondents agree that the penalty shall never be claimed as a federal or other tax deduction or credit.
- f. Respondents further agree and consent that if Respondents fail to pay the entire penalty amount within 30 days of the date on the final order, the full penalty amount proposed in the Complaint shall become immediately due and owing by Respondents.

6. The penalty specified in paragraph 5, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

7. Nothing in this Consent Agreement shall relieve Respondents of the duty to comply with the Clean Water Act and its implementing regulations.

8. Failure by Respondents to comply with any of the terms of this Consent Agreement shall constitute a breach of the consent agreement and may result in referral of the matter to the Department of Justice for enforcement of this agreement and for such other relief as may be appropriate.

9. Nothing in this Consent Agreement shall be construed as a waiver by the EPA or any other Federal entity of its authority to seek costs or any appropriate penalty associated with any collection action instituted as a result of Respondents' failure to perform pursuant to the terms of this consent Agreement.

10. Pursuant to 33 U.S.C. § 1319(g)(4), public notice was provided of the filing of the Complaint which is the subject of this Consent Agreement.

11. The undersigned representatives of Respondents certify that he/she are fully authorized to enter into the terms and conditions of this Consent Agreement and to bind the party he/she represents to the terms and conditions of this Consent Agreement.

12. The parties agree to submit this Consent Agreement to the Regional Judicial Officer, with a request that it be incorporated into a final consent order.

13. Each party shall bear its own costs and attorney fees in connection with this matter.

14. This Consent Agreement, upon incorporation into a final consent order by the Regional Judicial Officer and full satisfaction by the parties, shall be a complete and full civil settlement of the specific violations alleged in the Complaint.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 8,
Complainant.

Date: September 9, 2004

By: Melanie Pallman
Melanie Pallman, Supervisor
Technical Enforcement Program
Office of Enforcement,
Compliance and Environmental Justice

Date: 9 September 2004

By: David J. Janik
David J. Janik
Supervisory Enforcement Attorney
Legal Enforcement Program

Date: September 9, 2004

By: Elyana Sutin
Elyana Sutin, Enforcement Attorney
Alicia N. Hoegh, Enforcement Attorney

Holland & Hart, LLP

Dated: September 9, 2004

By: Paul D. Phillips
Paul D. Phillips
Elizabeth A. Mitchell
555 17th Street, Suite 3200
Denver, Colorado 80202-3979

ATTORNEYS FOR RESPONDENTS
WEINGARTEN/MILLER/AURORA
JOINT VENTURE AND ADOLFSON &
PETERSON CONSTRUCTION

CERTIFICATE OF SERVICE

The undersigned certifies that the original of the attached **CONSENT AGREEMENT/FINAL ORDER** in the matter of **WEINGARTEN/MILLER/AURORA JOINT VENTURE, et. al**, **DOCKET NO.: CWA-08-2003-0078** was filed with the Regional Hearing Clerk on September 9, 2004.


Further, the undersigned certifies that a true and correct copy of the document was delivered to Elyana Sutin, Enforcement Attorney, U.S. EPA - Region VIII, 999 18th Street - Suite 300, CO 80202-2466. True and correct copies of the aforementioned document was placed in the United States mail certified/return receipt on September 9, 2004 to:

Paul D. Phillips, Esq.
Elizabeth A. Mitchell, Esq.
Holland and Hart LLP
555 17th Street, Suite 3200
Denver, CO 80202-3979

and pouch mailed to:

Honorable Barbara A. Gunning
Administrative Law Judge
Office of Administrative Law Judges (1900L)
Ariel Rios Building
1200 Pennsylvania Avenue, NE
Washington, DC 20460

September 9, 2004



Tina Artemis
Regional Hearing Clerk